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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 AMERICAN ECONOMY INSURANCE
12 COMPANY, an Indiana corporation,

13 Plaintiff,

14 vs.

15 NICEFORO HERRERA, individually and
16 doing business as ACAPULCO'S
17 PRODUCE MARKET; NICHOLAS M.
18 FINTZELBERG doing business as
19 MILNIK TRUST PROPERTIES; LUIS
20 BENITEZ; and JOHANNA BENITEZ, by
21 and through her guardian at litem, luis
22 Benitez,

23 Defendants.

CASE NO. 06cv2395 WQH (CAB)

ORDER

24 HAYES, Judge:

25 The matter before the Court is the Motion for Leave to File Supplemental First
26 Amended Complaint for Declaratory Relief and Rescission (Doc. # 40) filed by Plaintiff
27 American Economy Insurance Company ("Plaintiff").


28 Plaintiff alleges that after filing this action, Defendant Niceforo Herrera legally
changed his name to Luis Herrera, and that the case caption and First Amended Complaint
("FAC") (Doc. # 22) do not reflect this name change. (Mem. Supp. Mot. Amend. Compl.
at 2). Plaintiff moves the Court for an order permitting an amendment to the FAC in order
to ensure that the FAC and any resulting judgment correctly state Defendant Herrera's
name. Plaintiff alleges that counsel for Plaintiff contacted counsel for Herrera about the

1 relief sought and counsel for Herrera did not object. *Id.* Defendants have not filed an
2 opposition to the Motion.

3 Rule 15 of the Federal Rules of Civil Procedure mandates that leave to amend “be
4 freely given when justice so requires.” Fed. R. Civ. P. 15(a). This policy is applied with
5 “extraordinary liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079
6 (9th Cir. 1990). Once an answer to the complaint has been filed, as is the case here, courts
7 may deny leave to amend where the proposed amendment would be futile, where it is
8 sought in bad faith, where it will create undue delay, or where “undue prejudice to the
9 opposing party will result.” *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973);
10 *see also Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992); *Saul v.*
11 *United States*, 928 F.2d 829, 843 (9th Cir. 1991).

12 Having reviewed the Motion and the supporting documents, and having received no
13 opposition from Defendants, the Court **GRANTS** the Motion for Leave to File
14 Supplemental First Amended Complaint for Declaratory Relief and Rescission (Doc. # 40)
15 filed by Plaintiff American Economy Insurance Company. Plaintiff shall file a
16 Supplemental First Amended Complaint which substitutes Niceforo Herrera for Luis
17 Herrera **no later than January 7, 2008.**

18 DATED: December 14, 2007

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20 **WILLIAM Q. HAYES**
21 United States District Judge
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